

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

## COMPLAINT AND JURY DEMAND

## I. NATURE OF THE CASE

1. This is an action brought by Plaintiff, Amanda Gaston ("Gaston"), by counsel, against Defendant, Flex N Gate Corporation ("Defendant"), for violating the Age Discrimination in Employment Act ("ADEA"), as amended, 29 U.S.C. § 621 *et. seq.*

## II. PARTIES

2. Gaston is a resident of Illinois
3. Defendant routinely conducts business within the geographical boundaries of the Southern District of Indiana.

### III. JURISDICTION AND VENUE

4. Jurisdiction is conferred on this Court over the subject matter of this litigation pursuant to 28 U.S.C. § 1331; 28 U.S.C. § 1343; and 29 U.S.C. § 626.
5. Defendant is an "employer" as that term is defined by 29 U.S.C. § 630(b).
6. Gaston was an "employee" as that term is defined by 29 U.S.C. § 630(f).

7. Gaston satisfied her obligation to exhaust her administrative remedies having timely filed a Charge of Discrimination with the U.S. Equal Employment Opportunity Commission against Defendant alleging Discrimination based on her Age. Gaston received the required Notice of Suit Rights and timely files this action.

8 A substantial part of the events, transactions, and occurrences relevant to this lawsuit arose within the geographical environs of the Southern District of Indiana; thus, venue is proper in this Court.

#### **IV. FACTUAL ALLEGATIONS**

9. Gaston began working on the assembly line for Defendant on around August 2018.

10. At all relevant times, Gaston met or exceeded Defendant's legitimate performance expectations.

11. On or around March 20, 2020, Gaston was temporarily laid off when Defendant closed during the COVID-19 Pandemic.

12. On or around May/June 2020, Gaston and her husband, Charles Gaston (59 years old), called Adam Lesley (30 years old), to ask if he had been recalled back to work by Defendant. Lesley was recalled a month prior.

13. Following their call with Lesley, Gaston and her husband quickly ascertained that Defendant only recalled their younger, less seniority employees back to work. The list of recalled individuals, includes but is not limited to, the following:

- a. Adam Lesley, age 30 and employed by Defendant for 15 months;
- b. Roger (LNU), age 40 and employed by Defendant for one year;

- c. Justin (LNU), age 22 and employed by Defendant for one year;
- d. Jimmy (LNU), age mid-20s and employed by Defendant for 9 months;
- e. Jesse (LNU), age 20 and employed by Defendant for 6 months;
- f. Carla (LNU), age 40 and employed by Defendant for 2 months;
- g. Gage (LNU), age 25 and employed by Defendant for one year; and
- h. Jason Sweeny, age 22 and employed by Defendant for one year.

14. On or around June 30, 2020, Defendant coded Gaston's temporary layoff as permanent, effectively terminating her employment immediately.

15. According to Defendant's Handbook, when it comes to coding a temporary layoff to a permanent layoff there are five factors they have in order to offer "impartial treatment to all employees"; (1) demonstrated ability based upon past written and actual job performance; (2) promotability and transferability of skills to other positions; (3) performance evaluations; (4) disciplinary record; and (5) length of service. Under these factors, Gaston meets each one and under the impartial system, she should have been exempt from a permanent layoff.

16. Defendant's reason for termination is pretext for Age Discrimination.

## **V. CAUSES OF ACTION**

17. Gaston hereby incorporates by reference paragraphs one (1) through sixteen (16) of her Complaint as if the same were set forth at the length herein.

18. Defendant discriminated against Gaston by subjecting her to disparate treatment on the basis of her age.

19. Gaston's employment was terminated because of her age.

20. Defendant's actions were intentional, willful, and in reckless disregard of Gaston's rights as protected by the Age Discrimination in Employment Act ("ADEA"), as amended, 29 U.S.C. § 621 *et. seq.*

21. Gaston has suffered damages as a result of Defendant's actions.

#### **VI. REQUESTED RELIEF**

WHEREFORE, Plaintiff, Amanda Gaston, by counsel, respectfully requests that this Court find for Plaintiff and:

1. Permanently enjoin Defendant from engaging in any employment policy or practice that discriminates against any employee on the basis of his/her age;
2. Reinstate Plaintiff to the position, salary, and seniority level she would have enjoyed but for Defendant's unlawful employment actions, or award her front pay in lieu thereof;
3. Order that Plaintiff be awarded any back pay she would have earned, including fringe benefits with related money benefits and interests thereon, absent Defendant's unlawful acts.
4. Compensation for any and all other damages suffered as a consequence of Defendant's unlawful actions;
5. Award Plaintiff liquidated damages for Defendant's violations of the ADEA;
6. Award the Plaintiff her attorney fees, litigation expenses, and costs incurred as a result of this action;

7. Award Plaintiff pre- and post judgement interest on all sums recoverable; and
8. Grant such other relief as may be just and proper.

Respectfully Submitted,

BIESECKER DUTKANYCH & MACER, LLC

By: /s/ Taylor Ferguson

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**DEMAND FOR JURY TRIAL**

Plaintiff, Amanda Gaston, by counsel, requests a trial by jury on all issues deemed so triable.

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